

**Call to Order:**

The meeting was called to order at 7:30 p.m. in the 3<sup>rd</sup> Floor Conference Room of the Town Offices. Present were Vice Chairman Zachary Bergeron, members Vincent Chiozzi, Joan Duff and Neil Magenheim, and Associate Member Rocky Leavitt (arrived at 7:35 p.m.). Also present were Paul Materazzo, Director of Planning & Economic Development, Lisa Schwarz, Senior Planner and Jacki Byerley, Planner.

**27-45 Main Street – Draper Lofts:**

Mr. Bergeron opened the public hearing for 27-45 Main Street, Draper Lofts, an application submitted by Touchdown, LLC for a Modification of a Special Permit (SP17-04) to redesign the parking lot to increase the number of parking spaces by removing the drive-up banking canopy and replacing it with two drive-up ATMs; and to revise the use of the upper level from 12 residential units to 3 residential units and 10,513 s.f. of commercial space.

Ms. Schwarz stated that the applicant is coming forward with changes to the permit (SP17-04) that was issued by the Board one year ago. Approvals are also needed from the Zoning Board of Appeals for the proposed changes to the parking lot and the Design Review Board for changes to the façade. Mr. Bergeron stated that the Board should keep in mind that the decisions of the ZBA and DRB may affect the plans before this Board. Mr. Chiozzi stated that he would like an overview of the project tonight.

Bob Lavoie, an attorney representing the applicant, stated that his client is currently seeking a modification to a 25 year old variance with the ZBA which allowed for the creation of a parking lot at 24 Central Street, an SRA zoned parcel. The modification would change the design of the parking lot to allow travel lanes to access two ATM's on the bordering General Business zoned parcel. The variance was needed because of the number of employees at the bank that needed parking. The next ZBA hearing is September 6<sup>th</sup> and a site visit will take place on August 29<sup>th</sup>. The application for modification to the Planning Board special permit calls for a rearrangement of the upper level space from 12 apartments to three, three bedroom apartments and 10,000 s.f. + of commercial space. In regards to the changing of the façade, the DRB only meets once a month, and they will be meeting on September 12<sup>th</sup>.

Paul Kneeland of Touchdown, LLC, the applicant, stated that he is currently negotiating leases. A lease for the proposed office space on the top floor is almost executed. Other executed letters of intent include a 4,500 s.f. restaurant on the main level, and a children's art studio and large full service salon on the basement level. He is hoping to have the balance of the project leased by April 1<sup>st</sup>. The design of the façade has proved to be too expensive due to the structural challenges of a modern design on an old building. The new design is more conventional. TD Bank wants to abandon the drive-thru bank teller if an additional ATM can be added to the site. This would add more parking closer to the building and eliminate the ugly canopy.

Ms. Duff stated that she was disappointed that this plan eliminates any affordable residential units. Mr. Bergeron stated that he felt the residential units were an attractive element to this downtown project, but he understands the applicant is making a business decision. Mr. Leavitt questioned why the applicant would keep any of the residential units in this plan. He noted that the co-mingling of the residential with the commercial on the upper floor didn't make sense to him. Mr. Kneeland stated an attractive commercial tenant approached him about taking almost

the entire upper level. The residential units over Main Street are attractive, with balconettes (sliding glass door that goes out a few inches to a rail) overlooking Main Street. The office space tenant does not have concerns with the residential units. Mr. Leavitt stated that during the previous special permit process, the Board felt that balconies only made sense in the rear of the building. Mr. Kneeland stated that you cannot stand on a balconette. Mr. Bergeron noted that a balconette was more of a glorified window with a rail in front of it. Mr. Kneeland stated that if the Board did not want residential in this project he would eliminate it. The residential is a different type of housing stock that would make the project legitimately mixed use. Ms. Duff reiterated that she liked the residential, but she wished the project had at least one affordable unit.

Ms. Duff read into the record comments from Ann Knowles, a Board member who wasn't present. Ms. Knowles's comments were in regards to ensuring that the look and feel of any development reflect the fact that Andover is a great place to live and to shop. She suggested that the Board take this opportunity to explore what can be done to make frontages more attractive, to upgrade landscaping and signage and minimize the amount of blacktop. Mr. Bergeron asked Ms. Duff if Ms. Knowles wanted the parking to stay as is. Ms. Duff stated that she wanted it to stay as is, but to soften it up. Ms. Schwarz noted that in the first review of this project last year, the parking lot wasn't changing at all. Now that there is a request to change the parking lot, Ms. Knowles would like any change to include beautification.

Mr. Chiozzi noted that the Board previously spent a lot of time on the parking, with the commercial use using the parking during the day, and the residential at night. He felt that a 4,500 square foot restaurant presents a new parking situation that will need to be addressed. Mr. Bergeron questioned if keeping the residential balances out the parking. Mr. Kneeland noted that the issued special permit does not include the use of 24 Central Street for parking, but this modification request does include that parking lot.

Kurt Hellauer of 6 Chestnut Street noted that he had provided the Board with a letter. He stated that the special permit that the applicant is seeking to modify did not contemplate the 24 Central Street parking lot, but this plan doesn't work without that parcel because it is the access to the ATMs. He voiced frustration that the applicant and TD Bank have broken the project up into pieces over the last year, and added that applicant stated last year that there were no plans to use the 24 Central Street parcel. Mr. Bergeron stated that the Board will only include 24 Central Street into their considerations if the ZBA grants the variance. Mr. Hellauer asked for special attention to be paid to the encroaching pressure of the three remaining abutting single family dwellings on Chestnut Street. He noted the application states that the property is zoned business, but the 24 Central Street parking lot is zoned residential.

Mr. Chiozzi questioned that if this is a modification, then the applicant should be submitting a new application because a new piece of property is being added. He suggested that staff may get an opinion on this from Town Counsel. Mr. Materazzo stated that staff would look at previous filings and report back to the Board.

Ron Hill of 15 Abbot Street asked the Board to strongly consider the impact to the neighborhood. The area is very historically significant and General Lafayette visited the Rose

Cottage at 2 Chestnut Street during the Civil War. He added that 25 years ago a commercial building was proposed for Phillips Academy, but Town Meeting did not pass the zoning change for it because it would have changed the character of a historic neighborhood. The effects ATM machines in proximity to beautiful historic homes should be carefully considered. Preserving the character of those homes and making them livable should be a main concern of the Board.

Jennifer Tietjen of 2 Chestnut Street asked for an explanation of the parking requirements. Ms. Schwarz stated that the required number of parking spaces based on the submitted plans is 89, and the applicant has 44 parking spaces in one lot and 24 in another lot. She explained that in the General Business District downtown there is a process for the Planning Board to allow for a reduction in parking space requirements if the development has a mix of uses, allows for pedestrian access and/or shared parking. Without this process many businesses would not have been able to open because it is almost impossible to create new parking downtown. The reduction was granted for the original special permit because of the ability for the residential units to share parking with TD Bank.

Michael Cook of 68 Central Street asked if the parking involves two parcels. Ms. Schwarz stated that it is two parcels because TD Bank owns one of the parcels. Mr. Cook asked how many parking spaces were part of the original special permit issued last year. Ms. Schwarz stated 44 parking spaces.

Jennifer Tietjen of 2 Chestnut Street noted that TD Bank has a special permit for their reduced parking, this application is requesting a reduction in parking, and the lot at 24 Central Street, which is bank employee parking from 9 a.m. to 5 p.m., is always full by 9 a.m. She added that Blackstone, another downtown business also uses that lot as employee parking. She felt it would be simpler to continue to use the 24 Central Street lot exclusively for employee parking.

Amie Hellauer of 6 Chestnut Street showed a photo of the original home at 24 Central Street which was torn down to make the parking lot. She also showed a photo of the view of the parking lot out of her bedroom window. She stated that she is very supportive of new businesses and restaurants and supports thoughtful development. She did not believe that further encroachment into the residential neighborhood is in the best interest of the Town. She objects to three lanes of traffic on the 24 Central Street parcel.

Paul Kneeland asked if the parking issues would be resolved if he could re-tenant the building from residential to allowed uses. Ms. Schwarz noted that parking would still be part of the special permit and is calculated based on the use. She noted that now that the applicant has signed agreements for tenants, the parking calculations can be more concrete. Mr. Kneeland asked if he eliminated the residential, if he could do this project today without needing the modification. Ms. Schwarz stated that the restaurant triggers the necessity for a special permit. Attorney Lavoie stated that a memo from Ms. Schwarz calculates that a restaurant use will only be 13-14 parking spaces. Mr. Chiozzi noted that a restaurant has both patrons and employees. The restaurant may close at 10 p.m. or 11 p.m. but the employees leave much later, and they would be parking in the lot. The Board has to consider the number of spaces and time and use of those spaces.

Joe Ponti of 10 Marion Avenue asked if the applicant had a contingency plan for the ATMs other than the 24 Central Street property. Mr. Kneeland stated that they do but in order to change the location TD Bank would have to agree and then the safety officer would have to approve the traffic flows and circulation. The location would also have to meet the needs of the other tenants. Attorney Lavoie noted that if the ZBA denies their application they will be forced to find a new location.

On a motion by Ms. Duff seconded by Mr. Magenheim, the Board continued the public hearing on 27-45 Main Street until Tuesday, September 25, 2018 at 7:30 p.m. **Vote:** Unanimous (5-0).

**141 Elm Street – Stonehill at Andover:**

Mr. Bergeron opened the discussion for 141 Elm Street, Stonehill at Andover, a Performance Guarantee release request. Ms. Byerley stated that last year the Board set a bond for the subdivision roadway and off-site improvements at \$173,800.00. The applicant has finished the required work for the utilities and the off-site improvements and the beginning portion of the driveway. The Department of Public Works is recommending that the full amount be released back to the applicant.

A resident who stated that she was an abutter asked if the bond is released, if she had no recourse through that bond with the Town for blasting damage to her home. Ms. Byerley stated that the abutter has no recourse through this bond because this bond is not held for that type of surety. The bond is held only for utility work and off-site improvements which have been completed. The abutter asked if the Planning Board holds any bonds for residential damage. Ms. Byerley stated that the Board does not; blasting is permitted through the Fire Department and the State Fire Marshall's Office. The abutter stated that she had a complaint about the existing lighting and Ms. Byerley informed her that she should direct that complaint to the Inspector of Buildings.

On a motion by Mr. Chiozzi seconded by Ms. Duff the Board approved the release of the Performance Guarantee to secure the proper construction and completion of the services and ways from \$173,800.00 to a zero balance as recommended by the Department of Public Works in an email dated August 16, 2018. **Vote:** Unanimous (5-0).

**7 Montego Circle:**

Mr. Bergeron opened the public discussion on 7 Montego Circle, a request for a modification of Conditions 19 and 20 of the subdivision restriction for an approved Definitive Plan entitled "Montego."

Rachel Baime, an attorney representing Tim and Despina Mouzakis of 7 Montego Circle, handed out a large copy of the plot plan for the property. She stated that her clients have owned the property for approximately 25 years. The property includes an almost 30 year old restriction placing no disturbance zone on the property that cuts it in half in which there can be no disturbance in this area without the Planning Board's approval. The homeowners would like to install a swimming pool within the limit of disturbance. Attorney Baime showed plans for a pool with the no disturb line superimposed over it with associated grading, topography and pool fence. She stated there are no plans to disturb the existing slope or wooded buffer, and area is also mostly flat so minimal grading will take place. Attorney Baime noted that the homeowner has a medical condition and her doctor has recommended aqua therapy. She added that no

retaining walls are needed and that there is no beneficial purpose served by this restriction today. The restriction was most likely put in place to protect an abutting neighborhood from seeing the new houses, but the existing wooded buffer is very thick. The homeowners have spoken to their neighbors on either side and they do not have any issue with the pool.

Mr. Chiozzi asked if the homeowners have spoken to their neighbors in the rear. Attorney Baime stated that the neighbors in the rear are far away and the thick woods prevent the homeowner from walking through the yards. The homeowner, Tim Mouzakis stated that he has never met the neighbor directly behind him and he does not know how long they have lived there. To get to their home from his he would have to take Montego Circle to Gould Road to Forrest Drive to the neighbor's home on Farrwood Drive.

Mr. Bergeron asked Ms. Byerley about what the relevance of the buffer was for this development. Ms. Byerley stated that she believes that the assumption Attorney Baime made was correct. Mr. Magenheim noted that the area is cleared already and a wooded buffer already exists so if the Board approves this no other trees would be taken down. Mr. Bergeron asked what the intention of the buffer was, and questioned if it involved only taking down trees or if a shed would not be allowed in that area. Attorney Baime stated that it is written that there would be no disturbance. Mr. Levitt stated that the condition states that no regrading or removal of vegetation was allowed without approval of the Board. Mr. Bergeron questioned if the home was built with the existing grading.

Chris Sparages of Williams & Sparages, an engineer representing the homeowner stated that the lot has a lawn area with a 10 ft drop off to the tree line. There is an existing "shelf" of land where the pool will be installed so very little grading will have to take place. Ms. Byerley asked Mr. Sparages how much of the pool goes into the limit of disturbance. Mr. Sparages stated that the new hardscape is approximately 1,100 s.f. Mr. Bergeron asked if the "shelf" was original to the house or if it had been prepared at some other time. Mr. Sparages stated that a building permit for regrading was obtained by the homeowner in 2016. Attorney Baime submitted the Building Permit to the Board. Mr. Leavitt asked what work was performed under that building permit. Mr. Mouzakis stated that fill was brought in to level out the ground. Ms. Byerley asked if they intended to put a pool in when the grading work was performed in 2016. Mr. Mouzakis stated that in 2016 their intention was only to level out the ground.

Mr. Leavitt asked for an explanation of conditions issued by the Board and the authority of the Building Inspector regarding the conditions. Ms. Byerley stated that the Building Inspector allowed for some grading work to be performed on the property through the issuance of a building permit in 2016. She could not speak to if the Building Inspector knew of the 30 year old restriction at the time. The property owners became aware of the restriction and are now going through the correct process to seek permission from the Board to install a pool within the restricted area. Mr. Leavitt showed Google Earth Images of the property from May 2016 and April 2017 of the previous grading work that took place on the site. Mr. Sparages stated that when contacted this year about performing the engineering work for the pool installation, he did his due diligence and found a restriction on the property. At that time he advised the homeowners to reach out to a local attorney.

Mr. Leavitt stated that nothing was provided to the Board that referenced the site being previously prepped. Attorney Baime noted that the homeowner obtained a building permit to perform that work. She stated that the restriction has served its purpose for the last 30 years and the installation of the pool will not change that purpose.

Mr. Chiozzi noted that if the abutter in the rear had an objection to any tree removal, they would have complained by now. Mr. Magenheim asked if this is a common subdivision condition. Ms. Byerley stated that the size of this buffer is uncommon, it is usually 10-20 ft. Mr. Bergeron asked how far the limit of disturbance line is from the property line. Mr. Sparages stated that it at its shortest distance it is 75 ft and at its longest distance it is 107 ft. Mr. Mouzakis stated that the two homes are 200 ft apart. Mr. Magenheim asked what the limit of disturbance was for the recently approved subdivision Monarch Lane. Ms. Byerley stated that Monarch Lane had a 20 ft limit of disturbance. Ms. Byerley informed the Board that they do not have to remove the limit of disturbance, they could simply allow for the pool and fencing work to take place within the limit of disturbance. Mr. Materazzo noted that if this subdivision had been approved today, instead of a limit of disturbance on private property that land most likely would have become permanently protected open space conveyed to Conservation or AVIS. Attorney Baime pointed out the limit of disturbance on the other lots showing that they had a more reasonable amount of land, as her client's property was almost cut in half by this restriction.

Mr. Bergeron stated that in his opinion, if the homeowners had come to the Board in 2016 in regards to regrading, the Board most likely would have looked favorably on it. He based his opinion on what the Board has recently seen in regards to the size of other limits of disturbance and the fact that this limit of disturbance is very generous at more than 70 ft. Mr. Leavitt stated that it was great evidence that the regrading was performed under a building permit.

On a motion by Mr. Chiozzi seconded by Ms. Duff the Board granted the request on behalf of the owners of 7 Montego Circle to allow the construction of an in-ground pool with associated earth movement and regrading as shown on the plan dated August 28, 2018 within the limit of disturbance line. **Vote:** Unanimous (4-0).

#### **Election of Officers:**

The Board discussed who would be interested in serving in officer roles for the next year.

On a motion by Ms. Duff seconded by Mr. Magenheim the Board elected Zachary Bergeron as Chairman, Vincent Chiozzi as Vice Chairman and Ann Knowles as Secretary. **Vote:** Unanimous (5-0).

#### **Merrimack Valley Transportation Management Association:**

Andrea Leary, Executive Director of the Merrimack Valley Transportation Management Association (TMA), along with Gretchen Grosky, Program and Communication Manager, and consultant Allison Simmons of Ease Consult gave a presentation to the Board on a strategic plan for the organization. The TMA, a public private partnership, was founded in Andover in 1997 and expanded to other parts of the Merrimack Valley in 2004.

Ms. Simmons stated that the strategic plan of the TMA involves the goals of securing financial stability, strengthening membership engagement and increasing program participation. Their new vision statement is to “Promote sustainable transportation choices that leverage resources and enhance the lives of those that live and work in the Merrimack Valley Region.” They will be focusing on economic development and future growth as well as laying a foundation for car free living, while creating targeted programs and services based on community needs, recognizing that millennials will soon be the largest number of employees in the workforce. Ms. Simmons showed programs and solutions that the TMA is hoping to implement including advocacy, pilot programs, shuttle service, data collection and a public/private partnership. Ms. Simmons asked for the Board to consider permit requirements for new developments to join the TMA and include specific mitigation goals that the TMA could monitor.

**Sign Bylaw Update:**

Mr. Materazzo stated that he is working with a group of residents on the sign bylaw. The Board can expect an update from this group in the fall.

**Meeting Minutes:**

On a motion by Ms. Duff seconded by Mr. Leavitt, the Board approved the Andover Planning Board Minutes for the dates of July 10, 2018 and July 24, 2018. **Vote:** Unanimous (3-0).

**Adjournment:** The meeting was adjourned at 9:40 P.M.

Documents:

**27-45 Main Street – Draper Lofts:**

- Comments from Ann Knowles dated 8/28/18
- Letter from Kurt and Amie Hellauer, 6 Chestnut Street, dated August 23, 2018, received by Planning Division August 24, 2018
- Letter from Garrett and Jennifer Tietjen, 2 Chestnut Street, dated August 23, 2018, received by Planning Division August 24, 2018
- Photos provided by Amie Hellauer of 6 Chestnut Street of view out her bedroom window and historical photo of former home located at 24 Central Street
- Lisa Schwarz Memo to the Planning Board dated August 22, 2018

**141 Elm Street – Stonehill at Andover:**

- Email from David Dargie, Construction Inspector, Department of Public Works to Jacki Byerley, Planner, Community Development & Planning dated August 16, 2018.

**7 Montego Circle:**

- Plot Plan, 7 Montego Circle dated July 31, 2018
- Plan for Pool, 7 Montego Circle dated July 31, 2018
- Town of Andover, MA Permit to Build B-16-1117
- Google Earth Image May 2016
- Google Earth Image April 2017

Merrimack Valley Transportation Management Association:

- Merrimack Valley Transportation Management Association – Planning Board Presentation August 28, 2018

Meeting Minutes

- Andover Planning Board Draft Meeting Minutes Dates July 10, 2018
- Andover Planning Board Draft Meeting Minutes Dates July 24, 2018